

Determination of Need for a Restriction, Condition, Public Use Limit, or Closure

Subject: Temporary closures or restrictions to taking wildlife (brown bears)

Pursuant to Title 36 of the Code of Federal Regulations (CFR), sections 13.40 and 13.50, the National Park Service has determined it is necessary to restrict the take of brown bears at bait stations in Denali, Gates of the Arctic, Wrangell-St. Elias, and Yukon-Charley Rivers National Preserves. These changes are in response to recent changes in state law.

13.40(e) Temporary closures or restrictions to the taking of fish and wildlife (brown bears)

A person may not take a brown bear at a bait station from April 15 through June 30 in Denali, Gates of the Arctic, Wrangell-St. Elias, and Yukon-Charley Rivers National Preserves.

The reasons for this restriction are:

During the 2012 Spring Board of Game (BOG) meeting, the BOG made an exception to a long standing general prohibition regarding the take of brown bears at bait stations. The BOG authorized the taking of brown bears at bait stations in Unit 12, Units 20C and 20E, and Unit 21D. When the regulation was proposed and then promulgated, the NPS identified that portions of three National Preserves were affected by these authorizations.

The public safety concerns posed by food conditioned bears are universally recognized by natural resource agencies throughout the range of the species. Food conditioned bears are more likely to be a danger to humans than those that are not food conditioned. Further, food conditioning of bears tends to increase the likelihood of a bear being killed in defense of life or property. Baiting is incongruent with best management practices and standard public educational messaging on the issue of food and bears.

The State of Alaska is the primary entity responsible for managing wildlife in accordance with State mandates. At the same time, the NPS is charged with the responsibility for assuring that the take of fish and wildlife is consistent with the fundamental purposes of the park system and those of individual park units. Federal law provides that the fundamental purpose of national park areas is conservation of park resources and values, including the scenery, the natural and historic objects, and wild life therein, and prohibits impairment of park resources or values. Under NPS Management Policies, activities that may result in impairment include those that impact a “resource or value whose conservation is . . . key to the natural . . . integrity of the park or to provide opportunities for enjoyment of the park.” (NPS Management Policies, 1.4.5) Because the impact threshold at which impairment occurs is not always readily apparent, the NPS policies require managers avoid impacts that are inconsistent with park purposes and values; diminish opportunities for current or future generations to enjoy, learn about, or be inspired by park resources or values; or unreasonably interfere with other appropriate uses.

In addition to the above, the legislated purposes of Denali, Wrangell-St. Elias, and Yukon-Charley Rivers include the protection of habitat for and populations of fish and wildlife. Congress directed the NPS to manage National Preserves in the same manner as National Parks

with the exception that sport hunting and trapping are authorized. (ANILCA, Public Law 96-487, section 1313). In considering the management of national park areas, the National Park Service must consider the expectations laid out in the 1916 Organic Act, the 1970 General Authorities Act, and the 1978 Redwoods Amendment, as well as the 1980 Alaska National Interest Lands Conservation Act (ANILCA) and other legislation. National park areas are closed to the taking of wildlife except as specifically authorized by Congress. Congress authorized taking of wildlife in NPS preserves for Title VIII subsistence uses, trapping, and sport purposes under state law. This is not an authorization without limit, and must be implemented in light of the high public value and integrity of the National Park System.

In passing ANILCA, Congress did not absolve the National Park Service from operating within the legal, regulatory, and policy framework applicable across the National Park System. The Senate Energy and Natural Resources Committee (S. Rpt. 96-413) stated “It is contrary to the National Park Service concept to manipulate habitat or populations to achieve maximum utilization of natural resources.” A further statement in the Congressional Record on ANILCA provides that “[t]he standard to be met in regulating the taking of fish and wildlife and trapping is that the preeminent natural values of the Park System shall be protected in perpetuity and shall not be jeopardized by human uses. These are very special lands and this standard must be set very high[.]” The State’s general hunting program applies in NPS Preserves to the extent that it is consistent with NPS laws, regulations and policies. The NPS may close or restrict the take of wildlife in the Preserves pursuant to ANILCA section 1313 and federal regulations at 36 CFR 13.40 and 13.50.

Continuation of the natural processes is expected in NPS areas except as specifically authorized by Congress. The new practice of taking brown bears over bait is not consistent with this expectation in that baiting explicitly alters the natural behavior of any wildlife species coming into contact with, or finding palatable, the contents of a bait station. Behavior of carnivorous or omnivorous species is altered and their vulnerability to harvest is increased. The practical effect is increased efficiency for taking predator species and has potential to create harvest pressures on the local natural abundance, behavior, distribution, and ecological integrity of these native wildlife species. State laws or actions that seek to manipulate natural wildlife populations for human consumption, or have that practical effect, are inconsistent with Congress’s authorization for taking wildlife for sport purposes and with NPS statutes, regulations, and policies.

Until recently, brown bear baiting has been prohibited since statehood. To our knowledge, brown bear baiting is not currently allowed by any other North American state, province, or country. Thus, there is little current or historic data available to predict effects of this practice.

The taking of black bears over bait is allowed on some Alaskan NPS units under both State and Federal regulations. However, the take of black bears over bait on NPS lands is a rare event. From the harvest data reported to the State of Alaska, ≤ 37 black bears were hunted over bait in preserves, and ≤ 34 of these were harvested in Wrangell-St. Elias National Preserve. Of the 37, only 3 bears were harvested over bait by rural Alaska residents from NPS preserves from 1992-2010. The concerns raised for brown bears relative to food conditioning and public safety apply equally to black bears. This topic warrants consideration.

Sport hunting is allowed on NPS Preserves, but the authorizations established by the BOG are not isolated from Federal authorities applicable on NPS lands. NPS management responsibilities, established in the Organic Act and further refined in subsequent legislation, regulation, and policy, must be followed in determining which activities will and will not benefit the fundamental purpose of the National Park System. Introducing NPS Preserves to this historically illegal method of harvest has the potential to result in unacceptable impacts to the resources and values for which the park area was established to protect. This restriction recognizes that State and Federal management objectives and authorities differ. A federal restriction is necessary for NPS Preserves to remain compliant with Federal law and policy for NPS areas. The NPS remains committed to managing park resources and values in a way that avoids unnecessary interference with State management of resident wildlife resources.

A less restrictive approach was attempted but was not effective. The NPS opposed the proposals to the BOG that affected preserves, and requested that, if such regulations were adopted, NPS lands be excluded. The BOG adopted the regulation authorizing the taking of brown bears at bait stations in Units 12, 20C, 20E, and 21D without excluding NPS lands. In doing so, the BOG has made it clear that the State process will not be used to remedy management inconsistencies on NPS lands. Rather, NPS has been encouraged to use its own authorities to ensure that preserves are managed in a manner consistent with federal law, policy, regulation and non-conflicting State regulation. The NPS again requested the Board revisit this authorization in preserves in 2013 and the Board considered but rejected that request at their January 2014 meeting. In the absence of change in state law or regulation, these restrictions are necessary. The NPS intends to propose a regulation to permanently address this issue.